



National Association
of Bond Lawyers

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April 16, 2020

VIA Electronic Mail

Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington DC 20551

RE: Municipal Liquidity Facility

Dear Ladies and Gentlemen,

The National Association of Bond Lawyers (NABL) is a specialty bar association of approximately 2,500 lawyers. NABL exists to promote the integrity of the municipal bond market by advancing the understanding of and compliance with the law affecting public finance.

NABL members hail from every U.S. state, the District of Columbia, and Puerto Rico. Our members represent state and local government issuers, nonprofit institutions and other borrowers, along with banks, underwriters, and other parties in connection with the issuance of tax-exempt bonds by state and local governments. NABL members and their firms are involved in a significant portion of the municipal financings in the U.S. every year.

NABL is pleased to provide input on the Federal Reserve's creation of the Municipal Liquidity Facility (MLF) as outlined on April 9, 2020 in its program announcement and term sheet, and requests further guidance regarding a number of provisions.

NABL appreciates that successful implementation of the MLF will require the Federal Reserve to understand and navigate through many differences in state laws relating to the authorization of states, cities and counties to issue debt. NABL stands ready to provide additional comments, and serve as a resource, as may be appropriate.

Thank you for the opportunity to relay our views. Please do not hesitate to reach out to Jessica Giroux, Director of Governmental Affairs at jgiroux@nabl.org or 202.503.3290, if we can be of assistance.

Sincerely,

Richard J Moore
President
National Association of Bond Lawyers

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Summary. NABL recognizes the significant efforts of the Federal Reserve to provide the Municipal Liquidity Facility and appreciates the development of a tool to address short-term cash flow financing needs of Eligible Issuers. As state and local governments (and hospitals, colleges and universities, multifamily housing providers and other conduit borrowers) confront longer-term financing needs, additional tools will be needed. Additional tools could include longer-term working capital financing options and Federal Reserve guarantees for state and municipal issuers and borrowers. NABL has proposals for financing tools to help states and municipal bond issuers and borrowers, including for tax-exempt long-term working capital as outlined in its letter¹ dated April 9, 2020 to the Congress of the United States and the United States Treasury. NABL has also been working with other industry groups including the Government Finance Officers Association (GFOA) as we collectively navigate the effects of the COVID-19 pandemic on the municipal bond market. We are in support of the letter² GFOA submitted to the Federal Reserve on April 15, 2020 regarding the Municipal Liquidity Facility.

We urge that the Federal Reserve provide clear, flexible, upfront guidance as soon as practicable to allow state and municipal issuers and borrowers to access the MLF to address immediate cash-flow financing needs. The MLF program intends that eligible states, counties, and cities be able to sell new municipal notes directly to the MLF to obtain the funds they need quickly and efficiently, and our comments are drafted with this intent in mind.

The urgency of state and local government liquidity needs counsels against program complexity. Clear, timely, flexible, upfront guidance regarding eligible issuers, eligible structures, underwriting standards, documentation and disclosure requirements, and pricing will be extremely helpful to state and municipal issuers and borrowers. Clear, timely, flexible, upfront guidance is especially important as many states will need to move quickly to adopt legislation to authorize borrowing through the MLF.

We further encourage additional action by the Federal Reserve, Treasury and Congress, including tools to address the longer-term working capital financing needs of state and municipal issuers and borrowers. Additional comments follow.

Eligible Entities. Based on the MLF Term Sheet, an Eligible Issuer is a state, city with a population over 1 million, or county with a population over 2 million (or an instrumentality thereof that issues on behalf of the state, city, or county for the purpose of managing its cash flows), in each case subject to review and approval by the Federal Reserve.

Flexibility Regarding Eligible Issuers. The Eligible Entity definition excludes thousands of local governments and conduit borrowers (including hospitals, colleges and universities, multifamily housing providers and others) with immediate needs for cash-flow financing. It will be important

¹ NABL's April 9, 2020 letter to Congress and the Treasury can be found at the following web address: <https://www.nabl.org/DesktopModules/Bring2mind/DMX/API/Entries/Download?portalid=0&EntryId=1340>.

² GFOA's April 15, 2020 letter to the Federal Reserve can be found at the following web address: https://gfoa.org/sites/default/files/Fed_MLF_GFOA.pdf

to address these cash-flow financing needs by (1) providing clear, timely, flexible, upfront guidance allowing states and other Eligible Issuers to provide conduit liquidity financing for local governments and other borrowers through the MLF, (2) expanding the pool of Eligible Issuers either through the MLF or via an additional liquidity financing tool provided under Section 4003 of the CARES Act, and (3) providing further tools for financing long-term working capital. Additional tools will be necessary as state and local governments (and conduit borrower hospitals, colleges and universities, multifamily housing providers and others) work towards recovery from the public health emergency and the economic effects of the sudden halt to business activity.

Allowing Additional Conduit Issuers and Structures. The MLF Term Sheet provides that only one issuer per state, city, or county is eligible. To assist states and other Eligible Issuers in providing liquidity financing to local governments and others, it would be helpful to amend the Term Sheet to allow states and other Eligible Issuers to designate a second (at least) entity to borrow for cash flow for local governments and other borrowers. For example, a state may have an existing bond bank that is well positioned to provide liquidity financing to local government, or a state authority that is well positioned to provide liquidity financing to other borrowers, but neither is an appropriate vehicle to borrow for the state's own cash flow needs.

Eligible Notes. Eligible Notes are notes issued in anticipation of taxes (TANs), taxes and revenues (TRANs), or bonds (BANs), and other similar short-term notes issued by Eligible Issuers.

Flexibility Regarding Eligible Note. States and other Eligible Issuers are authorized to issue specific types of obligations under their respective state law. General obligations paid from taxes, and other full faith and credit obligations, typically consume constitutionally- and statutorily-limited debt capacity. Many states allow the issuance of revenue (or special fund) obligations that do not constitute debt for the purposes of constitutional and statutory debt limits. Allowing states and other Eligible Issuers to issue revenue anticipation notes (RANs) in addition to TANs, TRANs and BANs will be helpful in reconciling the MLF requirements with state laws.

It is particularly important in the context of states issuing on behalf of local governments and other borrowers to allow Eligible Notes to be structured to avoid consuming the state's legal debt capacity. From a program utility perspective, states also will be more able to provide assistance to local government and other borrowers if Eligible Notes issued to purchase local government obligations can be structured to avoid obligating the state's credit. Allowing Eligible Notes to include pooled RANs paid from a pool of local government obligations, or RANs paid from a particular local government or borrower obligation, would provide flexibility under state law and vastly increase the program's utility. For example, allowing a state to purchase the general obligation or utility revenue note of a local government and assign or sell the note (or a pool of notes) as an Eligible Note to the MLF SPV would provide flexibility.

Eligible Purposes; Sizing. The MLF is intended to provide funds to help offset the delay in state and local tax receipts caused by the deferral of the income tax filing deadline and, as announced, "to help offset any short term losses in tax revenues resulting from reduced business and

consumer activity due to the coronavirus pandemic.” An Eligible Issuer may use the proceeds of Eligible Notes purchased by the SPV to help manage the cash flow impact of income tax deferrals resulting from an extension of an income tax filing deadline, potential reductions of tax and other revenues or increases in expenses related to or resulting from the COVID-19 pandemic, and requirements for the payment of principal and interest on obligations of the relevant Eligible Issuer. The SPV may purchase Eligible Notes up to an aggregate amount of 20% of the general revenue from own sources and utility revenue of the state or county government, as applicable, for fiscal year 2017. States may request that the SPV purchase Eligible Notes in excess of the applicable limit in order to assist political subdivisions and instrumentalities that are not eligible for the MLF.

Flexibility regarding Permitted Purposes. The program is designed to provide an immediate cash-flow liquidity financing tool. Guidance that permits Eligible Issuers to draw down amounts as needed, rather than in a lump sum at closing, would provide helpful flexibility to meet cash-flow demands. The MLF Term Sheet states that the SPV may purchase Eligible Notes issued in one or more issuances. Allowing an Eligible Issuer to borrow through a series of note issuances and/or through a draw down structure would be consistent with this approach. In addition to the origination fee, other costs of issuances should be payable from the proceeds of Eligible Notes. Eligible purposes should be broadly drawn given the range of needs in communities throughout the United States and the severity of the short-term losses in tax revenues resulting from reduced business and consumer activity due to the COVID-19 public health emergency.

Flexibility regarding Sizing. States and other Eligible Issuers are best situated to estimate their potential reductions of tax and other revenues and increases in expenses related to or resulting from the COVID-19 pandemic, based on their budgeting tools, and should be provided with latitude to rely on this budgeting information in sizing Eligible Notes within MLF program limits. The MLF Term Sheet includes program limits for Eligible Issuers, and could include comparable limits for conduit borrowers. Within these limits the program should rely on state and local budgeting tools to size particular issues and to spend proceeds on cash flow requirements driven by community needs.

Flexibility regarding Term. Eligible Notes must mature no later than 24 months from the date of issuance and be payable from taxes, revenues and other sources. Longer-term obligations will be required to provide working capital financing for state and municipal issuers and borrowers. To help address this need, the MLF could extend the maturity of Eligible Notes, or address this need through an additional Section 4003 program.

Documentation; Pricing. The MLF Term Sheet provides that pricing will be based on the Eligible Issuer’s rating at the time of purchase, with further details to be provided. Each Eligible Issuer must pay an origination fee equal to 10 basis points of the principal amount of the Eligible Issuer’s notes purchased by the SPV. The SPV will cease purchasing Eligible Notes on September 30, 2020, unless the Fed and Treasury extend the Facility.

Build on Existing Documentation. In terms of the documentation and opinions required to borrow through the MLF, we note that state and municipal issuers have established documentation and deliver standard forms of bond counsel opinions that reflect the nature of

obligations authorized under state law. State and municipal issuers have existing ratings (albeit for outstanding bonds, which are typically long-term credits). State and municipal issuers also provide annual and ongoing disclosure to investors via annual financial information, including financial statements, and notice of certain events filed through the MSRB's EMMA platform. To streamline the MLF documentation, it would be helpful to allow state and municipal issuers to utilize existing documentation (to the extent applicable), standard forms of bond counsel opinions, existing disclosure regimes, and existing ratings for reasonably comparable obligations.

Pricing. We encourage pricing that recognizes the urgency of the need, and the utility that the MLF can provide to the market if it is priced to meet this need. We note that state and municipal issuers provide tax- and utility revenue-backed credits, and very low default rates, as compared to corporate and other market borrowers, and urge that pricing reflect this credit strength. In considering whether to extend the Facility, we note that states will likely require legislation to borrow through the MLF, and depending on whether a legislative special session is able to be called, may not be able to act before the September 30, 2020 deadline.

No Tax-Exemption Requirement: The MLF Term Sheet did not require that an Eligible Note be exempt from federal income tax under Section 103 of the Internal Revenue Code nor did it provide that preference would be given to an Eligible Note that is exempt from federal income tax. Please confirm that there is no requirement or preference for Eligible Notes to be exempt from federal income tax. The tax regulations that determine whether an obligation that finances working capital qualifies for tax-exempt status were not written in the context of a pandemic. Under current tax law, issuers are greatly constrained in issuing tax-exempt bonds to finance working capital expenditures. The effect of these rules is to force issuers to complete complicated analyses of their projected deficit both before the bonds are issued and periodically thereafter. The combination of the complexity of those rules and the urgent liquidity needs of state and local governments weigh heavily against imposing a requirement or preference that interest on Eligible Notes be exempt from federal income tax.